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No. 93-81

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

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JOHN J. HART,
Petitioner,

v.

STOCKMAR ENERGIE, INCORPORATED,
d/b/a L.F.C. POWER CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the Superior Court of the State of California in and for the County of Sacramento, Appellate Department

REPLY BRIEF FOR PETITIONER

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TABLE OF AUTHORITIES

CASES Page

Banker's Life & Casualty Co. v. Crenshaw, 486 U.S. 71 (1988) 1, 2, 3, 4
Clark v. Jeter, 486 U.S. 456 (1988) 1, 2, 3
Dewey v. Des Moines, 173 U.S. 193 (1899) 4
Fort Halifax Packing Co., Inc. v. Coyne, 482 U.S. 1 (1987) 3
Gilmer v. Interstate/Johnson Lane Corp., 111 S.Ct. 1647 (1991) 8
Lingle v. Norge Division, Magic Chef, 486 U.S. 399 (1988) 6
Metropolitan Life Insurance Co. v. Commonwealth of Massachusetts, 471 U.S. 724 (1985) 3
Pollard v. U.S., 352 U.S. 354 (1957) 4
Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960) 7
Triad Data Services, Inc. v. Jackson, 153 Cal. App.3d Supp. 1, 200 Cal. Rptr. 418 (1984) 6
Webb v. Webb, 451 U.S. 493 (1981) 1

STATUTES AND REGULATIONS

Federal

§ 7 of the National Labor Relations Act, 29 U.S.C. § 157 ..... 3, 4
§ 301 of the Labor Management Relations Act, 29 U.S.C. § 185 3

State

California Labor Code
§ 201 5
§ 203 ..... 3, 5, 6
§ 229 ..... 3, 5, 7
Cal. Code Reg. § 13520 5

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REPLY BRIEF FOR PETITIONER

Petitioner, John J. Hart, files this Reply Brief to address a number of misleading arguments made by Respondent, L.F.C. Power Corp., in its Brief in Opposition ("Br. Opp.").

A. LFC's claim that Hart failed to meet the prudential criteria for a grant of *certiorari* (Br.Opp. at 5-8) is incorrect, for unlike the situations it cites, there is "no doubt from the record in this case that a claim under a federal statute . . . was presented in the state courts and that those courts were apprised of the nature or substance of [that] claim . . . ." *Webb v. Webb,* 451 U.S. 493, 501 (1981). In both *Banker's Life & Casualty Co. v. Crenshaw,* 486 U.S. 71 (1988), and *Clark v. Jeter,* 486 U.S. 456 (1988), upon which LFC relies, the federal issues

urged on this Court had never been articulated to the state courts. By contrast, the record herein shows that Hart did press his claim in the courts below.

In *Banker's Life*, a challenge to a Mississippi law which imposed a 15% penalty on litigants making unsuccessful appeals, the petitioner had argued to the state supreme court that the penalty "was clearly excessive, not reasonably related to legitimate purposes, constitutes [an] excessive fine and violates constitutional principles." 486 U.S. at 77. On *certiorari* to this Court, petitioner then sought to argue that the penalty violated the U.S. Constitution's Eighth Amendment prohibition on excessive fines. This Court found the language presented to the state court "too oblique" to allow the conclusion that the Eighth Amendment claim had been presented below, as it made "no reference whatsoever to the Eighth Amendment, the Federal Constitution or federal law." *Id.* at 77-78. Moreover, even had the state court understood the case to involve the constitutionality of the fines, it would not have known whether the claim arose under the U.S. Constitution, or under a similar provision in the state constitution. *Id.* at 78.

This Court likewise refused to entertain a federal statutory question that had not been pressed in the state courts in *Clark v. Jeter*, 486 U.S. 456. The appellant in *Clark* challenged the Pennsylvania six-year statute of limitations for paternity actions. In both the state court and in this Court, Clark had fashioned an argument based on a seeming inconsistency between the state statute and the federal Child Support Enforcement Amendments of 1984. This Court found, however, that while Clark sought to argue here that the state statute of limitations was preempted by the federal amendments—a question of federal law—the issue she had pressed below, whether the legislature had intended the statute to be read in a manner consistent with federal law, was purely a question of state law. 486 U.S. at 459-60.

In contrast to both *Banker's Life* and *Clark*, Hart made plain to the state courts that this case involves the federal issue of the impact that the misapplication of preemption principles under § 301 of the Labor-Management Relations Act ("LMRA"), 29 U.S.C. § 185, has on the rights guaranteed him by § 7 of the National Labor Relations Act ("NLRA"), 29 U.S.C. § 157. In appealing the Municipal Court's assessment of penalties under § 203 of the California Labor Code, LFC argued, *inter alia*, that both § 229 of the Code and principles of federal preemption under § 301 of the LMRA precluded Hart from recovering. Hart opposed that appeal, denying that § 301 precluded the state from granting him the protections of its minimum labor standards. Citing *Metropolitan Life Insurance Co. v. Commonwealth of Massachusetts*, 471 U.S. 724 (1985) and *Fort Halifax Packing Co., Inc. v. Coyne*, 482 U.S. 1 (1987), Hart pointed out that this Court has previously held that federal law does not preempt the application of state minimum labor standards to employees covered by collective bargaining agreements. And Hart went on to stress, as this Court had in *Metropolitan Life*, that holding otherwise, and *denying* organized employees the protections afforded to those not covered by collective bargaining agreements, "would turn the policy that animated the Wagner Act on its head." Respondent's Opening Brief on Appeal from the Municipal Court of Sacramento County, at 7 (*quoting Metropolitan Life*, 471 U.S. at 756).

In making that argument, Petitioner admittedly did not cite specifically to Section 7 of the NLRA. However, he clearly made the point that if the Superior Court were to reverse the Municipal Court and deny him his state-guaranteed rights on the grounds urged by LFC, that denial would implicate his rights under the Wagner Act. Moreover, Petitioner made this reference to federal law explicit in his Petition for Writ of Mandate to the California State Supreme Court, in which, in seeking review of the Superior Court decision, he argued that denying the

minimum benefits of the California wage law to organized employees is tantamount to placing a direct sanction on union membership, in contravention of the protection afforded by NLRA § 7. Petition for Writ of Mandate at 20-23.

If anything, the issue articulated in the petition for writ of *certiorari* constitutes a "mere enlargement" of the federal issue Hart presented first to the Superior Court and then, in more explicit terms, to the State Supreme Court. *Banker's Life*, 486 U.S. at 78 n.2, *citing Dewey v. Des Moines*, 173 U.S. 193, 198 (1899). Hart clearly pressed upon the state courts his contention that it would violate his rights under the federal labor laws to deny him the benefits he sought in this case. Particularly since, in making all of these arguments in the state courts, Hart was pursuing his case pro se, *cf. Pollard v. U.S.*, 352 U.S. 354, 359 (1957), Petitioner should be deemed to have met this Court's prudential standards for having "pressed" his federal claim in the courts below. *Banker's Life*, 486 U.S. at 79-80.

B. In reformulating the questions presented, LFC has displayed a fundamental misapprehension of what this case is about. Contrary to the impression the Company seeks to create, this case is *not* about whether a state may assess penalties "against an employer for 'willfully' *breaching a collective bargaining agreement* . . . ." Br.Opp. at i (emphasis added). Nor does this case raise the issue whether an employee covered by a collective bargaining agreement "which contains an arbitration clause, [may be required] to pursue his wage and penalty claims through collectively bargained arbitration *before resorting* to . . . litigation." *Id.* (emphasis added). Rather, this case presents the question whether the state may *deny* benefits to an employee whose employer willfully violated a *statutory requirement*, without even considering whether similar benefits are available under the collective bargaining agreement. And, rather than being about exhaustion of contractual remedies, this case is about whether the state

may use the mere fact that an employee is working under a collective bargaining agreement with an arbitration clause as an *absolute bar* to that employee's right to pursue a statutory claim—again, regardless of whether the employee is entitled to pursue that claim through the bargaining agreement.

1. LFC contends that any finding that Hart is entitled to penalties under the California Labor Code would be "derived solely and exclusively from a determination that Respondent breached its collective bargaining agreement," and thus, that the claim is validly barred by Section 229 of the California Labor Code, as interpreted by the Superior Court. Br.Opp. at 8-9. This is a total misreading of the statute, and of the proceedings below.

The California Labor Code guarantees employees that if they are discharged, "the wages earned and unpaid at the time of discharge are due and payable immediately." Cal. Lab. Code § 201. The Code does not define the terms and conditions under which wages are earned or employees may be discharged; it simply establishes, as a minimum protection, that employees will receive their wages immediately upon being discharged. As an enforcement measure, the Code imposes penalties on employers who "willfully fail[] to pay . . . ." *Id.* at 203. And the Code defines the factual basis for imposing such a penalty: An employer's failure to pay wages will be deemed "willful" when the "employer intentionally fails to pay wages to an employee when those wages are due." 8 Cal. Code Reg. § 13520. A finding that there was a "good faith dispute that any wages are due" will preclude a finding of willfulness; but "[d]efenses presented which, under all the circumstances, are unsupported by any evidence, are unreasonable, or are presented in bad faith, will preclude a finding of a 'good faith dispute.'" *Id.*

The issues that the Municipal Court had to resolve in determining Hart's entitlement to penalties under the Labor Code were therefore (1) whether LFC failed to pay him the full wages he had earned and was owed at

the time he was discharged; (2) whether its failure to do so was "willful"; and (3) whether there was evidence of a "good faith dispute" that would preclude a finding of willfulness. As this Court wrote in *Lingle v. Norge Division, Magic Chef*, 486 U.S. 399, 407 (1988), "[e]ach of these purely factual questions pertains to . . . the conduct and motivation of the employer. [None] of the elements requires a court to interpret any term of a collective bargaining agreement."[1] In awarding Hart penalties, the Municipal Court examined the facts—*not the collective bargaining agreement*—and found that Hart "was authorized to work the overtime hours, that he did work the overtime hours, and that he was not paid for the overtime hours until more than thirty (30) days after they were due." Petition for Writ of Certiorari, Appendix ("Pet.App.") at 8a. The court further found—again, without recourse to the collective bargaining agreement—that "[t]he circumstances of this case, on the evidence presented, preclude a finding of a good faith dispute; [and that] Defendant's failure to pay the overtime was 'willful' within the meaning of Labor Code § 203." *Id.*[2]

2. LFC's arguments regarding Hart's purported obligation to exhaust the contractual grievance arbitration procedure are simply wrong. In the first place, Petitioner *did* file a grievance, and pursued it as far as the union was willing to take it. Pet.App. at 3a. Under the parties'

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[1] Under California law, a finding of willfulness requires only proof that the employer "intentionally fail[ed] or refuse[d] to perform an act which is required to be done"; not that the employer was motivated by "a deliberate purpose to defraud" the employee. *Triad Data Services, Inc. v. Jackson*, 153 Cal.App.3d Supp. 1, 9, 200 Cal. Rptr. 418 (1984).

[2] The only reason for which the court would have even arguably had to consult the collective bargaining agreement was to determine Petitioner's rate of pay. However, under the teachings of *Lingle*, the fact that federal law would govern any such questions of contract interpretation does not preempt the separate state law questions. 486 U.S. at 413 n.1. And in any event, there was no dispute in this case as to the applicable wage rate.

collective bargaining agreement, "[a]ll grievances . . . shall be adjusted by the duly authorized representatives of each of the parties to this Agreement." Section 1.4(c), Defendant's Trial Exhibit "A". In the absence of a contractual provision permitting him to pursue his grievance on his own, Hart had, in fact, exhausted his contractual remedies.

Hart has never complained in this action that § 229 precluded him from pursuing his penalty claim through the grievance arbitration procedure; and LFC's contentions in this regard (Br. Opp. at 10-12) totally misconstrue the underlying nature of this action. Petitioner is *not* here asserting that he was wrongfully denied the right to pursue this claim in *arbitration*. Rather, he is asserting that the Superior Court misapplied § 229 and principles of federal preemption in finding that the mere existence of an arbitration procedure precluded him from pursuing this claim *in court*.

The fact is that Hart *is* precluded from obtaining this statutory remedy through the contractually-provided grievance procedure. That result, however, is a function of the operation of federal labor policy, not the State Labor Code. As the Municipal Court found, neither the company nor the union—the two parties to the collective bargaining agreement—viewed the agreement as providing waiting time penalties; the agreement simply did not address the issue. Pet.App. at 3a (penalties "in fact are not included or excluded by the CBA.") As this Court has long held, an "arbitrator is confined to interpretation and application of the collective bargaining agreement, . . . [and] his award is legitimate only so long as it draws its essence from the collective bargaining agreement." *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960). Thus, even had the union decided to pursue the grievance through the arbitration procedure, the arbitrator would have been without authority to grant

Hart the penalties which, though provided under state law, had no basis in the bargaining agreement.[3]

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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[3] The Company's citation to *Gilmer v. Interstate/Johnson Lane Corp.*, 111 S.Ct. 1647 (1991) (Br. Opp. at 5) is totally inapposite to this case. In *Gilmer*, this Court held that an employee's express commitment, in his individual employment contract, to arbitrate all disputes arising out of his employment is enforceable under the Federal Arbitration Act. That ruling says nothing about whether a general statement, in a collective bargaining agreement, that "[n]othing in this Agreement . . . shall serve as a means to eliminate the protection or rights guaranteed to the employees . . . by the applicable . . . State statutes, Codes and Regulations" (Br. Opp. at 5), serves as a waiver of an individual employee's right to pursue his state rights through statutorily-provided means.